

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matters of	)	
	)	
Hyperion Telecommunications, Inc.	)	CCB/CPD No. 96-3
Petition Requesting Forbearance	)	
	)	
Time Warner Communications	)	CCB/CPD No. 96-7
Petition for Forbearance	)	
	)	
Complete Detariffing for	)	CC Docket No. 97-146
Competitive Access Providers and	)	
Competitive Local Exchange Carriers	)	

**COMMENTS OF GST TELECOM, INC.**

GST Telecom, Inc. ("GST"), by counsel, hereby files these Comments in response to the *Memorandum Opinion and Order and Notice of Proposed Rulemaking* ("NPRM") released on June 19, 1997 in the above-captioned proceedings. GST, through its wholly-owned operating companies, is a non-dominant provider of competitive access and competitive local exchange services in the southwestern and western United States.

The Commission seeks comments regarding whether it should expand its June 19, 1997 Order instituting permissive detariffing of competitive access services to "complete" (that is, mandatory) detariffing of such services. GST opposes mandatory detariffing of its services. Such a policy is not in the public interest, and should be rejected by the Commission. GST respectfully encourages the Commission to continue its permissive detariffing policy, as ordered on June 19, 1997 in this proceeding. However, for the reasons articulated below, GST urges rejection of the NPRM's tentative conclusion favoring "complete" detariffing, and continuation of the permissive tariffing *status quo*.

## **I. MANDATORY DETARIFFING IS NOT IN THE PUBLIC INTEREST**

GST recommends that the Commission reject a mandatory tariff forbearance policy for access services provided by competitive access providers (“CAPs”) and competitive local exchange carriers (“CLECs”). CAPs and CLECs should be allowed to file tariffs as required by their business needs. As competitive business opportunities expand, tariffs can provide a more efficient mechanism for dealing with larger numbers of customers than individual contract negotiations of all terms and conditions. Development and maintenance of individual customer contracts requires significant administrative resources, especially as GST’s customer base increases. Permitting continued filing of tariffs will provide flexibility and promote other efficiencies for growing competitive carriers.

Given that the Commission previously has required GST to file tariffs, some of its contracts refer to the rates, terms and conditions of tariffed services. In addition, most states still require GST to file tariffs for intrastate service. The FCC should continue to allow CAPs and CLECs the flexibility to use tariffs, contracts, and/or contracts that reference tariffs, as appropriate to meet customer requirements. Access services terms, conditions, service descriptions, and industry procedures in particular tend to be relatively standard because such services are based on similar technologies and can provide similar functionality. Thus, some of the costs and complexity of contract development can be avoided by using contracts that reference tariffs. In addition, contract administration becomes more streamlined and cost-efficient. Both competitive access providers and customers can benefit from such cost efficiency.

GST also takes issue with the Commission’s tentative conclusion that complete detariffing could permit “rapid response to market conditions through elimination of costs on carriers that

attempt to make new offerings.” In some instances, new services can be introduced expeditiously through a simple, single tariff revision rather than individually negotiating multiple carrier contracts.

Although the Commission has posited that “complete detariffing could preclude carriers from attempting to use the filed rate doctrine to nullify contractual arrangements” and also to “eliminate any threat of price coordination through tariffing,” the occurrence of such potential harms is extremely unlikely in the competitive access market. The nature of the competitive access market is such that most CAPs and CLECs have relatively few access customers, so any actions that would alienate or be adverse to the interests of even a few customers could risk a substantial portion of a CAP’s or CLEC’s access business. If GST used its tariffs to unilaterally change its relationship with its large access customers, such sophisticated customers would instantly be aware of such an attempted change, and could respond to such action either by migrating their access business back to the incumbent access provider or by giving business to another competitive access provider. GST has no captive market, and no market power to employ such tactics. If GST tried to unilaterally change its contractual arrangement through tariff revisions, it would risk a substantial portion of its business.

The competitive access business is highly competitive, and concern about potential abuse of permissive tariffing for price signaling or “coordination” also are misplaced. CAPs and CLECs do not possess market power, and thus cannot engage in monopoly pricing of access services.<sup>1/</sup> Because new entrants face competition from ILECs and other carriers, pricing is a crucial competitive tool. Price coordination between the ILEC and CAPs and CLECs would not

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<sup>1/</sup> See Comments of GST Telecom, Inc. filed in this docket on May 23, 1996 for a more detailed description of the lack of market power of CAPS and CLECS.

benefit the new entrants. To attract and retain customers, CAPs and CLECs must offer comparable or superior access services at prices that meet or beat the incumbent's prices.

## **II. THE COMMISSION SHOULD NOT EXERCISE FORBEARANCE AT THIS TIME**

Although Section 10 (a) of the Communications Act of 1934, 47 U.S.C. § 160 (a),<sup>2/</sup> permits the Commission to “forbear from applying any regulation or any provision of [the Communications Act]” if a public interest showing is met, GST respectfully submits that complete forbearance is not in the public interest at this time.<sup>3/</sup>

As the Commission points out in the NPRM, the D.C. Circuit has granted a stay pending appeal on the merits of the Commission's latest order adopting mandatory detariffing for interexchange carriers.<sup>4/</sup> Given the fact that the D.C. Circuit has already indicated, by granting a stay, that there is a likelihood that it would be improper for the Commission to eliminate tariffing

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<sup>2/</sup> Section 10 was added to the Communications Act by the Telecommunications Act of 1996.

<sup>3/</sup> The Section 10 (a) public interest inquiry considers whether:

- (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications or regulations by, for, or in conjunction with that telecommunications carrier or telecommunications service are just and reasonable, and are not unjustly or unreasonably discriminatory;
- (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
- (3) forbearance from applying such provision or regulation is consistent with the public interest.

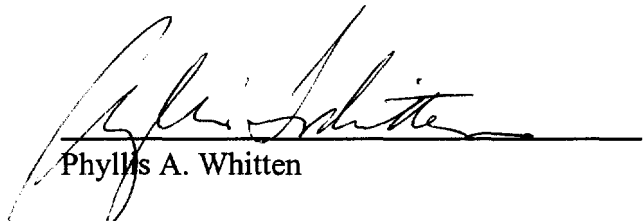
<sup>4/</sup> NPRM, ¶ 30; *see Second Report and Order, Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61 (Oct. 31, 1996), *stay pending appeal granted*, *MCI Telecommunications Corp. v. FCC*, No. 96-1459 (D.C. Cir. Feb. 13, 1997).

requirements for a far more mature competitive interexchange market, it would be premature for the Commission to rule on the merits of mandatory detariffing for CAPs or CLECs until after the D.C. Circuit rules on the issues in the interexchange carrier case.

### III. CONCLUSION

GST supports the Commission's action in permitting permissive detariffing. However, prohibiting all tariff filings by CAPs and CLECs for access services is not in the public interest. GST therefore respectfully submits that the Commission should reject its tentative conclusions regarding "complete" detariffing, and maintain the permissive detariffing *status quo* for CAP and CLEC tariff filings.

Respectfully submitted,



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Dated: August 18, 1997

## CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of August 1997, copies of COMMENTS OF GST TELECOM, INC. were hand delivered to those parties marked with an asterisk. All others were served by first class mail.

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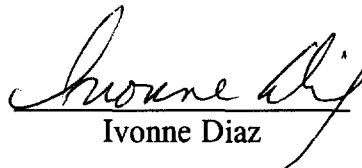
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